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January 15, 1999

HAND DELIVERED
PUBLIC SERVICE COMMISSION
12TH & 13TH FL DEPT 408
600 E BLVD AVE
BISMARCK ND 58505

RE: Western Wireless Corporation dba Cellular One v. Consolidated Telephone Cooperative
Our File No. 8306

Dear Sirs:

With this transmittal letter I am filing a formal Complaint with the Public Service Commission.


The formal Complaint is filed pursuant to NDCC § 49-21-10.2 and N.D.Admin.C. § 69-02-02-02.
Western Wireless is requesting relief as follows:

1. An order requiring Consolidated Telephone Cooperative to immediately reinstate service to the DID trunk and local telephone numbers in Regent, North Dakota, previously provided to Western Wireless Corporation;
2. An injunction enjoining Consolidated Telephone Cooperative from interfering with any DID trunk or local telephone number previously provided to Western Wireless Corporation; and
3. Such penalties, fines, and forfeitures for Consolidated Telephone's unlawful actions set forth above, in the maximum amount permitted by the Code.

Also enclosed with this transmittal letter is an Expedited Motion for Preliminary Injunction which is made pursuant to NDCC § 49-21-01.7-2 and N.D.Admin.C. § 69-02-02-08.

I have enclosed a copy of the Complaint for the Respondent Consolidated Telephone Cooperative and seven copies additional for the Public Service Commission, along with a copy of the Motion. We will be serving the Motion directly on Consolidated Telephone as well.

Very truly yours,



Thomas D. Kelsch

TDK:ve
Encs

c: Western Wireless (fax 425-586-8090) 34 pgs.

Before the
Public Service Commission of North Dakota

In the Matter of)	
)	
Western Wireless Corporation,)	File No. _____
d/b/a Cellular One,)	
)	
Complainant,)	
)	
v.)	
)	
Consolidated Telephone Cooperative,)	
)	
Respondent.)	
)	

COMPLAINT

Complainant Western Wireless Corporation ("Western Wireless"), by its attorneys and pursuant to Section 49-21-10.2 of the North Dakota Code ("Code"), ^{1/} and Section 69-02-02-02 of the Commission's rules, ^{2/} submits this complaint against Respondent Consolidated Telephone Cooperative ("Consolidated Telephone"), and alleges as follows:

^{1/} N.D. Code § 49-21-10.2.

^{2/} N.D. Admin. Code § 69-02-02-02.

FACTS

1. Western Wireless is a common carrier, ^{3/} a telecommunications company under Section 49-21-01-13 of the Code, ^{4/} and a "telecommunications carrier" under Section 153(44) of the federal Communications Act of 1934, as amended ("Act"). ^{5/} Western Wireless provides telecommunications services, including commercial mobile radio service under Section 332 of the Act, ^{6/} in North Dakota and 21 other states. Western Wireless' corporate address is 3650 - 131st Avenue, S.E., Suite 400, Bellevue, Washington 98006, and its phone number is (425) 586-8055. Its address for doing business in North Dakota is 4417 13th Avenue, S.W., Fargo, North Dakota 58104, and its phone number there is (701) 281-2800.

2. Consolidated Telephone is a common carrier and a telecommunications company under the Code, a "local exchange carrier" ("LEC") under Section 153(26) of the Act, ^{7/} and an "incumbent local exchange carrier" ("ILEC") under Section 251(h) of the Act. ^{8/} Consolidated Telephone provides local exchange telephone service as the ILEC for Regent, North Dakota. Consolidated Telephone's address is 507 South Main, Dickinson, North Dakota 58601.

^{3/} See 49-21-02 ("all persons providing telecommunications service within [North Dakota] shall be common carriers"); 47 U.S.C. § 153(10).

^{4/} N.D. Code § 49-21-01-12.

^{5/} 47 U.S.C. § 153(44).

^{6/} 47 U.S.C. § 332.

^{7/} 47 U.S.C. § 153(44).

^{8/} 47 U.S.C. § 251(h).

3. Consolidated Telephone provides itself with the trunks, local telephone numbers, and other facilities necessary to provide local exchange telephone service in Regent.

4. In August 1998, Western Wireless contacted Consolidated Telephone about having local telephone numbers assigned to Western Wireless to enable it to serve customers in the Regent area. Consolidated Telephone informed Western Wireless that Consolidated Telephone could provide Western Wireless with 2,000 local telephone numbers for a set price per number, per month. In addition, Consolidated Telephone indicated that it could provide Western Wireless with a local direct inward dialing ("DID") trunk to route calls from Consolidated Telephone's customers to Western's customers. Western Wireless elected to purchase the DID trunk offered by Consolidated Telephone, and to pay for the assignment of the 2,000 local telephone numbers.

5. Western Wireless used the trunk and some of the local telephone numbers to provide wireless telecommunications service to its customers in Regent, and intends to use the balance of the local telephone numbers to do the same. Western Wireless has, at all times up to January 11, 1999, timely paid in full for all facilities and services received from Consolidated Telephone.

6. Pursuant to the authority that the Federal Communications Commission ("FCC") has granted to CMRS carriers to provide fixed and hybrid

fixed/mobile wireless services,^{9/} Western began offering its Wireless Residential Service ("WRS") in Regent on January 7, 1999. Western Wireless' WRS offering provides consumers in Regent with a competitive alternative to local exchange service offered by Consolidated Telephone.

7. Between January 7, 1999, and January 11, 1999, three customers in Regent subscribed to Western Wireless' WRS offering. Many other customers in Regent expressed an interest in subscribing to the WRS offering.

8. On January 11, 1999, Consolidated Telephone disconnected the numbers previously assigned to Western Wireless and the DID trunk. Consolidated Telephone did not inform Western Wireless of this unilateral action until after Western Wireless had learned of it from its customers.

9. Upon information and belief, Consolidated Telephone discontinued service to Western Wireless with the intent of preventing Western Wireless from providing telecommunications service in competition with Consolidated Telephone.

10. As a result of Consolidated Telephone's disconnection of Western Wireless' DID trunk and local telephone numbers in Regent, Western Wireless' WRS and cellular customers in Regent are unable to receive calls, and Western Wireless is unable to fully offer any new WRS or cellular service to customers in Regent.

^{9/} *Amendment of the Commission's Rules To Permit Flexible Service Offerings in the Commercial Mobile Radio Services*, WT Docket No. 96-6, First Report and Order, 11 FCC Rcd 8965 (1996).

11. As a result of the discontinuance of service by Consolidated Telephone to Western Wireless in Regent, North Dakota, Western Wireless has incurred lost revenues and loss of customer goodwill.

Count 1
Unjust and Unreasonable Discrimination
(N.D. Code 49-21-07)

1. Western Wireless incorporates by reference paragraphs 1 through 11 of this Complaint as if fully set forth herein.

2. Consolidated Telephone's discontinuation of DID trunks and local telephone numbers to Western Wireless in Regent, North Dakota, while Consolidated Telephone continued to provide service to itself and its own customers, constitutes a violation of Section 49-21-07 the North Dakota Code, ^{10/} which makes it unlawful for any common carrier to make any unjust or unreasonable discrimination in practices, classifications, facilities or services for or in connection with like communication service, or to give any undue or unreasonable preference or advantage to any person or telecommunications company, or to subject any person or telecommunications company to any undue or unreasonable prejudice or disadvantage in the service rendered by it to the public.

^{10/} N.D. Code § 49-21-07.

Count 2
Duty to Interconnect
(N.D. Code 49-21-09)

1. Western Wireless incorporates by reference paragraphs 1 through 11 of this Complaint as if fully set forth herein.

2. The discontinuation of services by Consolidated Telephone to Western Wireless constitutes a violation of Section 49-21-09 of the North Dakota Code, ^{11/} which makes it the duty of Consolidated Telephone to interconnect with Western Wireless.

Count 3
Duty To Transmit Telecommunications Of Other Companies
(N.D. Code 49-21-10)

1. Western Wireless incorporates by reference paragraphs 1 through 11 of this Complaint as if fully set forth herein.

2. The discontinuation of services by Consolidated Telephone to Western Wireless constitutes a violation of Section 49-21-10 of the Code, ^{12/} which requires Consolidated Telephone to receive, transmit, and deliver, without discrimination or delay, the telecommunications of Western Wireless.

^{11/} N.D. Code § 49-21-09.

^{12/} N.D. Code § 49-21-10.

Count 4
Unlawful Discontinuance of Telecommunications Services
(N.D. Admin. Code 69-09-05-02-1)

1. Western Wireless incorporates by reference paragraphs 1 through 11 of this Complaint as if fully set forth herein.
2. Consolidated Telephone's discontinuation of service to Western Wireless constitutes a violation of Section 69-09-05-02-1 of the North Dakota Administrative Code, ^{13/} which prohibits Consolidated Telephone from discontinuing access to the local DID trunk and telephone numbers used by Western Wireless for its telecommunications services, for which Western Wireless has paid in full.

Count 5
Duty to Interconnect Under the 1996 Act
(47 U.S.C. § 251(a)(1))

1. Western Wireless incorporates by reference paragraphs 1 through 11 of this Complaint as if fully set forth herein.
2. Consolidated Telephone's discontinuation of services to Western Wireless constitutes a violation of Section 251(a)(1) of the Act, ^{14/} which makes it the duty of Consolidated Telephone to interconnect directly or indirectly with the facilities and equipment of Western Wireless.

^{13/} N.D. Admin. Code § 69-09-05-01-0.

^{14/} 47 U.S.C. § 251(a)(1).

Count 6
Dialing Parity
(47 U.S.C. § 251(b)(3))

1. Western Wireless incorporates by reference paragraphs 1 through 11 of this Complaint as if fully set forth herein.
2. Consolidated Telephone's discontinuation of services to Western Wireless constitutes a violation of Section 251(b)(3) of the Act, ^{15/} which makes it the duty of Consolidated Telephone to provide dialing parity to Western Wireless and to permit Western Wireless to have nondiscriminatory access to local telephone numbers in Regent.

Count 7
Access to Telephone Numbers
(47 C.F.R. § 51.217(c)(1))

1. Western Wireless incorporates by reference paragraphs 1 through 11 of this Complaint as if fully set forth herein.
2. Consolidated Telephone's discontinuation of services to Western Wireless constitutes a violation of Section 51.217(c)(1) of the FCC's rules, ^{16/} which requires Consolidated Telephone, as a LEC, to permit Western Wireless to have access to telephone numbers identical to that Consolidated Telephone provides itself.

^{15/} 47 U.S.C. § 251(b)(3).

^{16/} 47 C.F.R. § 51.217(c)(1).

Request for Relief

WHEREFORE, for the foregoing reasons, Western Wireless Corporation respectfully requests the Commission grant the following relief:

- a. An order requiring Consolidated Telephone Cooperative to immediately reinstate service to the DID trunk and local telephone numbers in Regent, North Dakota, previously provided to Western Wireless Corporation;
- b. An injunction enjoining Consolidated Telephone Cooperative from interfering with any DID trunk or local telephone number previously provided to Western Wireless Corporation; and
- c. Such penalties, fines, and forfeitures for Consolidated Telephone's unlawful actions set forth above, in the maximum amount permitted by the Code.

Respectfully submitted,

WESTERN WIRELESS CORPORATION

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Counsel for Western Wireless Corporation

Dated: January 15, 1999

Before the
Public Service Commission of North Dakota

In the Matter of)	
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Western Wireless Corporation,)	File No. _____
d/b/a Cellular One,)	
)	
Complainant,)	
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v.)	
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Consolidated Telephone Cooperative,)	
)	
Respondent.)	
)	

EXPEDITED MOTION FOR
PRELIMINARY INJUNCTIVE RELIEF

Complainant Western Wireless Corporation, d/b/a Cellular One ("Western Wireless"), by its attorneys and pursuant to Section 49-21-01.7-2 of the North Dakota Code (the "Code"), ^{1/} hereby moves the Commission for an expedited order requiring Respondent Consolidated Telephone Corporation ("Consolidated Telephone") to immediately restore to Western Wireless the direct inward dialing ("DID") trunk and local telephone numbers that, until January 11, 1999, Consolidated Telephone had been providing to Western Wireless for Western Wireless' telecommunications offerings in Regent.

Consolidated Telephone's anti-competitive animus is clear. It disconnected Western Wireless' service right after Western Wireless announced its

^{1/} N.D. Code § 49-21-01.7-2.

introduction of Wireless Residential Service ("WRS") in competition with Consolidated Telephone. The Commission should require Consolidated Telephone to immediately cease its discriminatory and anti-competitive conduct, and to fully restore the DID trunk and telephone numbers it previously provided during the pendency of Western Wireless' Complaint in this matter. ^{2/}

In support of the requested relief, Western Wireless respectfully submits the following:

BACKGROUND

Consolidated Telephone is the incumbent local exchange carrier ("ILEC") in Regent, North Dakota. As such, the company is a "common carrier" under Section 153(10) of the Act, ^{3/} a "telecommunications carrier" under Section 153(44) of the Act, ^{4/} a "local exchange carrier" ("LEC") under Section 153(26) of the Act, ^{5/} and an "incumbent local exchange carrier" under Section 251(h) of the Act. ^{6/} Western Wireless is a "common carrier" and a "telecommunications carrier" that provides authorized wireless telecommunications services, including commercial mobile radio service ("CMRS"), in North Dakota under Section 332 of the Act. ^{7/}

^{2/} See Complaint in *Western Wireless Corp. v. Consolidated Telephone Corp.*, filed on even date herewith.

^{3/} 47 U.S.C. § 153(10).

^{4/} 47 U.S.C. § 153(44).

^{5/} 47 U.S.C. § 153(26).

^{6/} 47 U.S.C. § 251(h).

^{7/} 47 U.S.C. § 332; see also *Amendment of the Commission's Rules To Permit Flexible Service Offerings in the Commercial Mobile Radio Services*, WT Docket No. 96-6, First Report and Order, 11 FCC Rcd 8965 (1996) ("*CMRS Flexibility Order*") (authorizing CMRS carriers to provide fixed and hybrid fixed/mobile services).

On January 7, 1999, Western Wireless initiated service in Regent, North Dakota. For the first time, customers in a rural part of the state were able to obtain service from a carrier other than the incumbent and subscribe to Wireless Residential Service ("WRS"), a wireless local loop offering designed to compete with the services offered by Consolidated Telephone in Regent, as well as to Western Wireless' cellular mobile telephone service.^{8/} These services were made possible by Western Wireless' purchase, from Consolidated Telephone, of a local DID trunk to route calls from Consolidated Telephone's customers to Western Wireless' customers, along with Consolidated Telephone's assignment of 2,000 local telephone numbers at a set price per number, per month.

On January 7 and January 8, 1999, the first two business days WRS was offered, Western Wireless enrolled three subscribers in Regent to the service. Numerous other residents of Regent also inquired (and have continued to inquire) about the WRS offering. On the next business day, January 11, 1999, Consolidated Telephone disconnected the local DID trunk and the 2,000 local telephone numbers it had been providing to Western Wireless for its telecommunications services in Regent.^{9/} Consolidated Telephone did not even inform Western Wireless of this unilateral action until after Western Wireless learned of it from its customers.

^{8/} Prior to this time, the handful of Western Wireless' cellular mobile customers in Regent were unable to subscribe to Western Wireless' cellular mobile service using local Regent phone numbers. Rather, they had to use phone numbers issued through an ILEC in Dickinson, North Dakota, some 50 miles away. This meant that all landline customers' outgoing calls were treated as toll calls in all areas outside Dickinson, including Regent.

^{9/} Western Wireless had at all times up to January 11, 1999, timely paid in full for all facilities and services received from Consolidated Telephone.

As a result of Consolidated Telephone's actions, all of Western Wireless' telecommunications services in Regent have suffered. None of the subscribers to Western Wireless' new WRS offering can receive incoming calls, nor can Western Wireless' cellular mobile customers in Regent. Moreover, Consolidated Telephone's actions have made it virtually impossible for Western Wireless to market its services in Regent. With no way to ensure the ability of its customers to receive incoming calls, Western Wireless's ability to enroll subscribers to its WRS or mobile cellular offerings in Regent is severely limited. Western Wireless has asked Consolidated Telephone to reinstate service to Western Wireless in Regent during the pendency of the companies' dispute, but Consolidated Telephone has been intransigent in its refusal to do so.

DISCUSSION

The Commission must expeditiously grant Western Wireless the preliminary injunctive relief it seeks and order Consolidated Telephone to immediately reinstate the DID trunk service and local telephone numbers that it is obligated to provide to Western Wireless under state and federal law. As demonstrated below, Consolidated Telephone has committed an blatantly illegal act. There is no legal basis for this type of vigilante justice. To the extent two carriers have differences of opinion, they should be settled through the appropriate legal and regulatory forums, not by one carrier taking unilateral action to destroy the other's service.

The Commission must immediately order Consolidated Telephone to restore the DID trunk service and local telephone numbers that the company

disconnected. Consolidated Telephone's anti-competitive action patently violates North Dakota law and regulations, as well as the Telecommunications Act of 1996. To protect consumers in Regent from a loss of service, and to protect the integrity of its regulatory process, the Commission must immediately order Consolidated Telephone to restore the *status quo ante*.

As demonstrated below, Western Wireless clearly meets the criteria for the grant of immediate relief in this matter. First, Western Wireless is likely to succeed on the merits, as Consolidated Telephone's discontinuation of service has no basis in law. Second,. Western Wireless and its customers are now suffering irreparable harm, and will continue to suffer severe harm until injunctive relief is granted. Third, the requested injunctive relief will cause no significant injury to Consolidated Telephone. Finally, the public interest favors grant of injunctive relief.

I. WESTERN WIRELESS IS LIKELY TO SUCCEED ON THE MERITS

Consolidated Telephone's discontinuation of Western Wireless' access to the local DID trunk and telephone numbers in Regent violates a raft of state and federal provisions designed to protect consumers, as well as competitive providers, of common carrier telecommunications services. These legal provisions (listed in the accompanying Complaint) include Sections 49-21-07, 49-21-09, and 49-21-10 of the North Dakota Code and Sections 251(a)(1) and 251(b)(3) of the federal Act. Given the extreme gravity and the sheer audacity of Consolidated Telephone's unlawful

actions, it is highly likely that Western Wireless will prevail on the merits of its Complaint.

First and foremost, Consolidated Telephone left consumers unable to obtain telecommunications service in the middle of the North Dakota winter. Consolidated Telephone shows blatant disregard for the safety of life and limb, not to speak of its total disdain for its legal and regulatory duties. Western Wireless' mobile and WRS customers cannot receive calls due to Consolidated Telephone's action. This means that, for example, if a Western Wireless customer were to call an ambulance service, the call might or might not be able to go through to the public safety answering point. Critically, if the connection were to be broken, the emergency dispatcher would not be able to return the call and locate the customer. It is not an exaggeration to say that people could die as a result of Consolidated Telephone's action.

In addition, Consolidated Telephone has no right to take the law into its own hands. Consolidated Telephone is apparently taking the position that Western Wireless lacks authority to provide its WRS offering. With all due respect, that decision is for the regulatory agencies to make. ^{10/}

^{10/} To set the record straight, however, it is clear that federally licensed commercial mobile radio service ("CMRS") carriers are authorized to provide fixed and hybrid fixed/mobile services, as well as purely mobile services. See *CMRS Flexibility Order*.

Moreover, Western Wireless' pending application for designation as an eligible telecommunications carrier ("ETC") to receive universal service support has absolutely no relevance to the matter at hand. Interestingly, neither the parties nor the Commission in the ETC proceeding have claimed -- or even raised the issue --

More to the point, there can be no dispute that Western Wireless is a "telecommunications company" under the North Dakota Code and a "telecommunications carrier" under the federal Act. Consolidated Telephone, as a "telecommunications company," is required by North Dakota law to interconnect with other telecommunications companies and to transmit their traffic, and is barred from discriminating against them.^{11/} Moreover, no telephone company in North Dakota is allowed to disconnect customers that have paid their bills, as has Western Wireless.^{12/}

Finally, Consolidated Telephone, as a "local exchange carrier" -- regardless of whether it may be eligible for exemptions from its Section 251(c) obligations due to its rural status -- is required to interconnect with other telecommunications carriers under Sections 251(a) and (b), which govern rural telephone companies and even competitive local exchange carriers.^{13/} Moreover, Section 251(b)(3) also requires local exchange carriers to provide their prospective competitors with local dialing parity and nondiscriminatory access to local telephone numbers.^{14/} These federal obligations, which state commissions have the

that Western Wireless needs to obtain certification to provide WRS over cellular spectrum.

^{11/} N.D. Code §§ 49-21-07, 49-21-09, and 49-21-10.

^{12/} N.D. Admin. Code § 69-09-05-02-1.

^{13/} 47 U.S.C. §§ 251(a)(1) & 251(b)(5).

^{14/} 47 U.S.C. § 251(b)(3).

power and duty to enforce, contain no exceptions for companies that don't feel like facing competition. ^{15/}

In conclusion, it is patently clear that the pro-competitive laws of North Dakota and the United States absolutely forbid the outrageously anti-competitive actions Consolidated Telephone has taken. The Commission must order Consolidated Telephone to reconnect Western Wireless' DID trunk and telephone numbers immediately.

II. WESTERN WIRELESS WILL SUFFER SIGNIFICANT IRREPARABLE HARM IN THE ABSENCE OF IMMEDIATE INJUNCTIVE RELIEF

As a result of its loss of access to its local DID trunk and local phone numbers in Regent, Western Wireless and its customers have suffered -- and continue to suffer -- irreparable harm at the hands of Consolidated Telephone. It is important to note in this regard that Consolidated Telephone has discontinued service not just to Western Wireless' WRS offering to which Consolidated Telephone

^{15/} To defend its actions, Consolidated Telephone apparently takes the position that Western Wireless lacks an approved interconnection agreement with it pursuant to Sections 251 and 252 of the Act (although it is notable that, when Western Wireless first obtained interconnection and numbering in August 1998, Consolidated did not claim that such an agreement was necessary). In any event, this is entirely beside the point. The FCC has recognized that CMRS carriers and LECs may have developed interconnection arrangements outside the scope of the 1996 Act, and explicitly required that such arrangements be continued on an interim basis pending the negotiation, arbitration if necessary, and approval of interconnection agreements pursuant to Sections 251 and 252. *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499, ¶¶ 1065-68 (1996), *aff'd in pertinent part sub nom. Iowa Utilities Board v. FCC*, 120 F.3d 753, 800 n.21 (8th Cir. 1997).

objects -- which would itself be enough to constitute the statutory violations set forth above -- but to Western Wireless' cellular mobile offering in Regent as well.

As described above, it is completely irresponsible to cut off a telecommunications service in the dead of winter in rural North Dakota. Consolidated Telephone's actions not only leave Western Wireless consumers without full local telephone service, they also endanger those customers' emergency communications.

Consolidated Telephone's unlawful actions also have stopped the nation's first rural wireless local loop offering dead in its tracks before it could even leave the station. Any offering that cannot carry both incoming and outgoing calls is essentially valueless and cannot be considered a local exchange service. By destroying the ability of Western Wireless' WRS customers to receive calls on their wireless equipment, Consolidated Telephone has effectively forced those customers to retain Consolidated Telephone's local exchange service to avoid being rendered unreachable by phone. Coming at any time, this would have a grave effect on the customer goodwill enjoyed by Western Wireless as to the WRS offering, an effect that is exacerbated when it occurred a mere *three days* after the customer has subscribed to the new service.

In addition, Western Wireless suffers this loss of customer goodwill and consumer confidence not only from customers it has signed up, but potential new customers as well. The initiation of the new WRS offering from Western Wireless was widely publicized, as was its being shut down by Consolidated

Telephone. If customers believe that WRS is inherently unreliable because it is prone to being shut down, without notice, by the local ILEC, the likelihood of customers opting to subscribe to WRS will be greatly diminished. The Commission must take swift action to ensure that the local DID trunk and local telephone numbers essential to Western Wireless' WRS offering are restored. Such erosion of customer goodwill is the essence of the type of irreparable harm justifying the grant of temporary injunctive relief.

Finally, each of the above-described harms are equally applicable in the context of Western Wireless' cellular mobile offerings in Regent. This harm is exacerbated by the fact that Western Wireless' cellular mobile service in Regent *has nothing to do* with Consolidated Telephone's complaint about Western Wireless providing competitive local service. All told, Western Wireless and its customers have suffered -- and will continue to suffer in the absence of relief -- more irreparable harm than is tolerable under the Act and the Commission's rules and policies.

III. CONSOLIDATED TELEPHONE WILL SUFFER NO COGNIZABLE HARM FROM A GRANT OF IMMEDIATE INJUNCTIVE RELIEF

Consolidated Telephone will not suffer any harm as a result of an order requiring the company to immediately restore Western Wireless' access to a working local DID trunk and local telephone numbers in Regent. The only harm that Consolidated Telephone might cite is that it would face competition from Western Wireless' WRS offering during the pendency of this proceeding. This harm.

however, is not only insufficient to overcome that suffered by Western Wireless and its customers, it should not be cognizable as a "harm" at all. The requirements of the North Dakota Code and the 1996 Act are *designed* to promote competition for all North Dakotans. As the competition from Western Wireless' WRS offering is the only harm that Consolidated Telephone can possibly proffer, there is no basis for denying immediate preliminary injunctive relief.

IV. THE PUBLIC INTEREST FAVORS A GRANT OF IMMEDIATE PRELIMINARY INJUNCTIVE RELIEF

As suggested by the preceding two sections, failure to remedy Consolidated Telephone's unlawful disconnection of Western Wireless' local DID trunk and telephone number access in Regent would pose dire public interest consequences. It is not in the public interest for Western Wireless' customers -- cellular mobile *or* WRS -- to lose the ability to make full use of the services that Western Wireless provides, as authorized by federal law. Nor can the public interest possibly justify Consolidated Telephone's anti-competitive actions toward Western Wireless. The North Dakota Code specifically provides that public utilities like Consolidated Telephone are "affected with a public interest," and that the public interest requires "the development of competitive markets for telecommunications services" and prohibits "unfair or destructive competitive practices." ^{16/}

^{16/} N.D. Code § 49-21-02-1 and -2.

Finally, the Commission must send the unmistakably clear message that decisions regarding local competition, interconnection, and entry of new carriers are to be decided in a lawful manner by the appropriate regulatory authorities. There is absolutely no possible basis for carriers to take matters into their own hands as Consolidated Telephone has done.

CONCLUSION

For the foregoing reasons, Western Wireless Corporation respectfully requests the Commission grant Western Wireless the preliminary injunctive relief sought by ordering Consolidated Telephone Cooperative to immediately reinstate service to the local DID trunk and telephone numbers in Regent, North Dakota, previously provided to Western Wireless Corporation.

Respectfully submitted,

WESTERN WIRELESS CORPORATION

By:



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